

AO 243  
REV 6/82MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

## United States District Court

Name of Movant Emilio Ramos	District MASSACHUSETTS
Place of Confinement United States Penitentiary, P. O. Box 1000, Lewisburg, Pennsylvania 17837	Prisoner No. 35179-054
	Docket No. 98-11857
(include name upon which convicted)	
UNITED STATES OF AMERICA	v. EMILIO RAMOS
(full name of movant)	

## MOTION

1. Name and location of court which entered the judgment of conviction under attack United States District Court - District of Massachusetts
2. Date of judgment of conviction January 17, 1995
3. Length of sentence 84 months - \$50.00 assessment, 5 years supervised release.
4. Nature of offense involved (all counts) Possession With Intent To Distribute Heroin

5. What was your plea? (Check one)

(a) Not guilty

(b) Guilty

(c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

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6. Kind of trial: (Check one)

(a) Jury

(b) Judge only

7. Did you testify at the trial?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court NOT APPLICABLE

(b) Result NOT APPLICABLE

(c) Date of result Not Applicable

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?  
Yes  No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court NOT APPLICABLE (U.S. District Court for the District of Massachusetts)

(2) Nature of proceeding NOT APPLICABLE (e.g. 28 U.S.C. § 2255 Motion)

(3) Grounds raised NOT APPLICABLE (e.g., Deficient advice from counsel regarding my right of appeal after sentencing upon a guilty plea).

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes  No

(5) Result NOT APPLICABLE (My counsel voluntarily dismissed this...)

(6) Date of result NOT APPLICABLE (Unknown to Petitioner at this time)

(b) As to any second petition, application or motion give the same information:

(1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes  No

(5) Result NOT APPLICABLE

(6) Date of result NOT APPLICABLE

(c) As to any third petition, application or motion, give the same information:

(1) Name of court NOT APPLICABLE

(2) Nature of proceeding NOT APPLICABLE

(3) Grounds raised NOT APPLICABLE

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes  No

(5) Result NOT APPLICABLE

(6) Date of Result NOT APPLICABLE

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes  No

(2) Second petition, etc. Yes  No

(3) Third petition, etc. Yes  No

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I wasn't aware of any adverse action, due to my counsel having failed to communicate the progress of the prosecution to me.

Plus, her voluntary dismissal, without prior consultation with me.  
see Exhibit 1 attached. letter dated July 14, 2004.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denial of Effective Assistance of Counsel, Mr.

Michael Avery, Esquire. Failure to give proper advise.

Supporting FACTS (tell your story *briefly* without citing cases or law): I required the superior ability of trained counsel in the 'examination into the record, research of the factual and legal law, as well as the strength and merits of the Government's case in chief against me, and counsel was constitutionally obligated to advise me respecting my decision to allow for intelligent exercise of particular right.

B. Ground two: Denial of Right of Appeal. Failure to Enter a timely notice of appeal, despite being requested to do so.

Supporting FACTS (tell your story *briefly* without citing cases or law): Mr. Michael Avery, Esquire, informed the Honorable Douglas P. woodlock, U. S. District Judge, at an Evidentiary Hearing held on May 12, 2000, at 2:30p.m. that he had no personal recollection concerning whether or not he had actually advised Petitioner of his right to appeal after his sentence was imposed....

C. Ground three: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (tell your story *briefly* without citing cases or law): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Ground four: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting FACTS (tell your story *briefly* without citing cases or law): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: The aforementioned grounds were presented, however, there has been no "full and fair adjudication upon the merits of the Petitioner's claims" due to the aforementioned ineffective assistance and/or deficient performance of counsel(s) representing the Petitioner in the complained of legal proceedings.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?  
Yes  No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Michael Avery, Esquire, c/o Suffolk University Law School, 41 Temple Street, Boston, Massachusetts 02114

(b) At arraignment and plea SAME AS ABOVE

(c) At trial NOT APPLICABLE

(d) At sentencing SAME AS ABOVE

(e) On appeal NOT APPLICABLE

(f) In any post-conviction proceeding Elizabeth Prevett, Esquire, Assistant  
Federal Public Defender, D.Mass., 408 Atlantic Avenue,, 3rd Fl.  
Boston, Massachusetts 02110.

(g) On appeal from any adverse ruling in a post-conviction proceeding NOT APPLICABLE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?  
Yes  No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?  
Yes  No

(a) If so, give name and location of court which imposed sentence to be served in the future: NOT APPLICABLE  
U. S. District Court for the Eastern District of New York

(b) Give date and length of the above sentence: NOT APPLICABLE (e.g. 57 months)

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?  
Yes  No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

August 2, 2004

(date)

  
M. Nicholas, Case Manager  
Authorized by the Act of  
July 7, 1955, as amended, to  
administer oaths, (18 USC 4004).

  
\_\_\_\_\_  
Signature of Movant

## CERTIFICATE OF SERVICE

I, Emilio Ramos, hereby certify that I have served a true and correct copy of the foregoing:  
28 U.S.C. § 2255 motion

Which is deemed filed at the time it was delivered to prison authorities for forwarding to the court, Houston vs. Lack, 101 L.Ed.2d 245 (1988), upon the court and parties to litigation and/or his/her attorney(s) of record, by placing same in a sealed, postage prepaid envelope addressed to:

Kevin Cloherty, Esquire  
Assistant United States Attorney  
U. S. Attorney's Office  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210

The Hon. Douglas P. woodlock  
U. S. District Court-Boston, MA  
1 Courthouse Way  
Boston, Massachusetts 02210  
[Attn: Clerk's Office]

and deposited same in the United States Postal Mail at the United States Penitentiary,

Signed on this 2 day of August,

Respectfully Submitted,

*M. Nicholas*  
M. Nicholas, Case Manager  
Authorized by the Act of  
July 7, 1955, as amended, to  
administer oaths, (18 USC 4004).

*Emilio Ramos*  
EMILIO RAMOS

REG. NO. 35179-054

FEDERAL DEFENDER OFFICE  
DISTRICT OF MASSACHUSETTS  
408 ATLANTIC AVENUE, 3RD FLOOR  
BOSTON, MASSACHUSETTS 02110

TELEPHONE 617-223-8061  
(FAX) 617-223-8080

July 14, 2004

Mr. Emilio Ramos  
Reg. #35179-054  
U. S. Penitentiary  
P.O. Box 1000  
Lewisburg, PA 17837

Dear Mr. Ramos:

I was informed by the court that you were attempting to contact me in connection with a writ of coram nobis you wish to file. In reading the letter you filed with the court, I was unclear about the exact nature of your request.

As you know, your § 2255 motion was voluntarily dismissed in anticipation of government support for a motion to reduce your term of supervised release under 18 U.S.C. 3583 (e). The support was conditioned on your continuing clear conduct on supervised release. The motion could not be filed before you had completed a year of supervised release. The grounds for your eligibility for release under the statute no longer applied after your intervening arrest and incarceration. Your probation officer in Brooklyn, who had supported the idea of the motion before your arrest, withdrew his support, and the statute allows for a reduction in supervised release only if it is "warranted by the conduct of the defendant released and the interest of justice."

I believe that any coram nobis you now file would be considered a separate action, for which you would not receive counsel unless the court decided to appoint you a lawyer.

Sincerely,

  
Elizabeth Prevett

ELP:lhd

Exhibit 1

## UNITED STATES DISTRICT COURT

District of

Plaintiff

U.S. DISTRICT COURT  
DISTRICT OF MASS.

V.

APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF  
FEES AND AFFIDAVIT

CASE NUMBER:

Defendant

I, Chynell Johnson declare that I am the (check appropriate box) petitioner/plaintiff/movant other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated?  Yes  No (If "No," go to Part 2)

If "Yes," state the place of your incarceration \_\_\_\_\_

Are you employed at the institution? \_\_\_\_\_ Do you receive any payment from the institution? \_\_\_\_\_

Attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

2. Are you currently employed?  Yes  No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

a. Business, profession or other self-employment	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
b. Rent payments, interest or dividends	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
c. Pensions, annuities or life insurance payments	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
d. Disability or workers compensation payments	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
e. Gifts or inheritances	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
f. Any other sources	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

IN UNITED STATES		<input type="checkbox"/> MAGISTRATE	<input checked="" type="checkbox"/> DISTRICT	<input type="checkbox"/> APPEALS COURT or	<input type="checkbox"/> OTHER PANEL (Specify below)										
IN THE CASE OF															
<p>Johnson v.s. Barnhart</p> <p>FOR</p> <p>AT 2004 CIV 6 - 4 P 12:55</p>															
PERSON REPRESENTED (Show your full name)			<p>U.S. DISTRICT COURT DISTRICT OF MASSACHUSETTS</p> <p>Defendant—Adult 2 <input type="checkbox"/> Defendant - Juvenile 3 <input type="checkbox"/> Appellant 4 <input type="checkbox"/> Probation Violator 5 <input type="checkbox"/> Parole Violator 6 <input type="checkbox"/> Habeas Petitioner 7 <input type="checkbox"/> 2255 Petitioner 8 <input type="checkbox"/> Material Witness 9 <input type="checkbox"/> Other</p>												
CHARGE/OFFENSE (describe if applicable & check box →)			<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor												
<table border="1"> <tr> <td colspan="2">LOCATION NUMBER</td> </tr> <tr> <td colspan="2">DOCKET NUMBERS</td> </tr> <tr> <td colspan="2">Magistrate</td> </tr> <tr> <td colspan="2">District Court</td> </tr> <tr> <td colspan="2">Court of Appeals</td> </tr> </table>						LOCATION NUMBER		DOCKET NUMBERS		Magistrate		District Court		Court of Appeals	
LOCATION NUMBER															
DOCKET NUMBERS															
Magistrate															
District Court															
Court of Appeals															
<b>EMPLOYMENT</b>  <b>ASSETS</b>  <b>OTHER INCOME</b>  <b>CASH</b>  <b>PROPERTY</b>  <b>OBLIGATIONS &amp; DEBTS</b>	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self-Employed														
	Name and address of employer:														
	IF YES, how much do you earn per month? \$			IF NO, give month and year of last employment											
				How much did you earn per month? \$											
	If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$											
	IF YES, how much does your Spouse earn per month? \$														
	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input type="checkbox"/> No														
	RECEIVED			SOURCES											
	IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES \$														
	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No														
IF YES, GIVE THE VALUE AND \$ DESCRIBE IT			VALUE	DESCRIPTION											
DEPENDENTS			MARITAL STATUS SINGLE MARRIED WIDOWED SEPARATED OR DIVORCED	Total No. of Dependents	List persons you actually support and your relationship to them										
DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)			APARTMENT OR HOME: rent N Star phone	Creditors	Total Debt										
					Monthly Paymt.										
				\$ 84.00	\$ 84.00										
				\$ 179	\$ 179										
				\$ 60.00	\$ 60.00										
I certify under penalty of perjury that the foregoing is true and correct. Executed on (date) 7/15/04															
SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED) → Chynell Johnson															

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SSN: 032-52-3539

Chynell JOHNSON,  
Plaintiff

FJL 06-4 P 12: n5  
\*

v.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSCivil Action Number:  
\*

Jo Anne B. BARNHART,  
Commissioner of the Social  
Security Administration

\*

**MOTION TO PROCEED IN FORMA PAUPERIS**

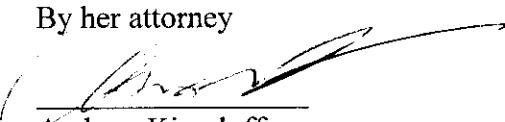
The plaintiff moves that pursuant to 28 U.S.C.A. § 1915 this court order that the complaint in this matter be entered, and that the payment of the entry fee be waived, and that the court order the cost of services, if any, to be paid from public funds.

As grounds, the plaintiff states that she is an indigent person who is without funds to pay litigation costs, and that she has filed an affidavit of indigency, which is incorporated herein.

WHEREFORE, the plaintiff moves that the court allow the complaint to be entered without payment of the entry fee.

Dated: July 30, 2004

CHYNELL JOHNSON  
By her attorney



Andrew Kisseloff  
BBO#274240  
Hale and Dorr Legal Services Center  
of Harvard Law School  
122 Boylston Street  
Jamaica Plain, MA 02130  
(617) 390-2590